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6
7 **BEFORE THE**
BOARD OF REGISTERED NURSING
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Statement of Issues Against:

Case No. *2011-980*

11 **DONNA C. HAMBY**
5509 Nebraska Drive
12 Concord, CA 94521

STATEMENT OF ISSUES

13 Applicant.

14
15 Complainant alleges:

16 **PARTIES**

17 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
18 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
19 Consumer Affairs.

20 2. On or about November 1, 2010, the Board of Registered Nursing, Department of
21 Consumer Affairs received an application for a Registered Nurse License from Donna C. Hamby
22 (Applicant). On or about October 16, 2010, Donna C. Hamby certified under penalty of perjury
23 to the truthfulness of all statements, answers, and representations in the application. The Board of
24 Registered Nursing denied the application on February 18, 2011.

25 **JURISDICTION**

26 3. This Statement of Issues is brought before the Board of Registered Nursing (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

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1 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
2 functions, and duties of a registered nurse, in which event the record of the conviction shall be
3 conclusive evidence thereof.

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5 7. Section 2762 of the Business and Professions Code, in pertinent part, states:

6 "In addition to other acts constituting unprofessional conduct within the meaning of this
7 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
8 chapter to do any of the following:

9
10 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
11 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
12 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
13 himself or herself, any other person, or the public or to the extent that such use impairs his or her
14 ability to conduct with safety to the public the practice authorized by his or her license.

15 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
16 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
17 or the possession of, or falsification of a record pertaining to, the substances described in
18 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
19 thereof.

20 8. Section 1444 of title 16 of the California Code of Regulations provides that a
21 conviction or act shall be considered to be substantially related to the qualifications, functions or
22 duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness
23 of a registered nurse to practice in a manner consistent with the public health, safety or welfare.

24 FIRST CAUSE FOR DENIAL OF APPLICATION

25 (Conviction of a Crime)

26 9. Applicant's application is subject to denial under sections 480(a)(1) and 2761(f) of the
27 Business and Professions Code in that she was convicted of a crime or act that is substantially

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1 related to the qualifications, functions, or and duties of a registered nurse. The circumstances are
2 as follows:

3 a. On or about March 30, 2010, in a criminal proceeding entitled People of the
4 State of California v. Donna Carol Hamby in Contra Costa County Superior Court, Case No.
5 146863-6, the applicant was convicted by her plea of nolo contendere for violating Vehicle Code
6 section 23152(b) (driving while a 0.08% or higher blood alcohol content) with a special allegation
7 of having a blood alcohol content over .15%), a misdemeanor.

8 b. The circumstances surrounding this conviction are that on or about December
9 11, 2009, an off-duty police officer observed a motor vehicle operated by the applicant driving all
10 over the roadway. The off-duty officer contacted the Concord Police Dispatch via cellular phone.
11 A Concord Police Officer arrived at the applicant's home address in time to observe applicant
12 pulling into her driveway. Upon contact with the applicant, the police officer could smell the
13 odor of an alcoholic beverage coming from applicant's breath and the applicant admitted that she
14 had consumed alcoholic beverages prior to driving her vehicle. The police officer asked the
15 applicant to perform a series of field sobriety tests which applicant failed to complete. Thereafter
16 based on the results of the field sobriety tests and the police officer's personal observations the
17 applicant was arrested for driving a motor vehicle while under the influence of alcohol or drugs, a
18 violation of Vehicle Code section 23152(a). After arriving at the county jail, the police officer
19 administered a Preliminary Alcohol Screening (PAS) test. The breath samples that the applicant
20 provided for the PAS test reported the presence of ethyl alcohol with readings of 0.197% and
21 0.214%. The applicant admitted in Contra Costa County Superior Court records that her blood
22 alcohol content was .20 percent or more.

23 c. On or about March 30, 2010, the applicant was sentenced to 2 days in the
24 County Jail, placed on summary probation for 3 years, ordered to pay fines and fees in the amount
25 of \$1,813.00, and ordered to enroll and complete a 9 month Alcohol or Drug Program.

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1 SECOND CAUSE FOR DENIAL OF APPLICATION

2 (Unprofessional Conduct – If Act Committed by Licentiate)

3 10. Applicant's application is subject to denial under section 480(a)(3) of the Business
4 and Professions Code in that she committed acts which if done by a licentiate of the business or
5 profession in question, would be grounds for suspension or revocation of license.

6 The circumstances are as follows:

7 a. As set forth in paragraph 9 above, the applicant would be subject to disciplinary
8 action under Business and Professions Code section 2761(a) on the grounds of unprofessional
9 conduct, as defined by Business and Professions Code section 2762(b), in that on or about
10 December 11, 2009, she used alcoholic beverages to an extent or in a manner dangerous or
11 injurious to herself or others.

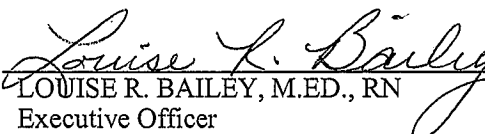
12 b. As set forth in paragraph 9 above, the applicant would be subject to disciplinary
13 action under Business and Professions Code section 2761(a) on the grounds of unprofessional
14 conduct, as defined by Business and Professions Code section 2762(c), in that on or about March
15 30, 2010, she was convicted of a crime involving the consumption of alcoholic beverages.

16 PRAYER

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
18 and that following the hearing, the Board of Registered Nursing issue a decision:

- 19 1. Denying the application of Donna C. Hamby for a Registered Nurse License;
20 2. Taking such other and further action as deemed necessary and proper.

21 DATED: 06-13-2011

22 
23 LOUISE R. BAILEY, M.ED., RN
24 Executive Officer
25 Board of Registered Nursing
26 Department of Consumer Affairs
27 State of California
28 Complainant

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